

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

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(16)

O.A. No. 367 OF 1986.
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DATE OF DECISION 19-10-1989

SHRI M.S. JADEJA

Petitioner

MR. M.K. PAUL

Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS.

Respondent(s)

MR. B.R. KYADA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Y*

Shri M.S. Jadeja,
Hindu, Adult,
Behind Railway Colony,
Near Bachu Maharaj Wadi,
Hapa,
Jamnagar.

..... Petitioner.

(Advocate: Mr. M.K. Paul)

Versus.

1. The Union of India,
owning and representing
Western Railway, through
The General Manager,
Western Railway,
Churchgate,
Bombay - 20.

2. The Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.

Respondents.

(Advocate : Mr. B.R. Kyada)

J U D G M E N T

O.A.NO. 367 OF 1986

Date: 19-10-1989.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri M.S. Jadeja of Jamnagar, has filed this application on 13.10.1986 under section 19 of the Administrative Tribunals Act, 1985. He has challenged the validity of the action of the Respondents Railway Administration whereby he is made to retire on superannuation with effect from 28.2.1986 on the basis of the assertion that his recorded date of birth is 1.2.1928. The petitioner claimed that his correct date of birth is 8.6.1928 as per the School certificate and the same has been initially recorded in the service sheet and not 1.2.1928 as contended. It is alleged that his date of birth has been wrongly changed to 1.2.1928 by the respondents, behind his back and without hearing and even without communicating such decision and thus he has been made to retire 4 months earlier

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to the actual date of the retirement. He has therefore prayed that the action of the Respondents-Railway Administration in retiring him from 28.2.1986 from the service, be declared illegal, null and void. He also prayed that the action of the Respondents-Railway Administration in changing his date of birth from 8.6.28 to 1.2.1928 is also illegal and the respondents be directed to pay all the arrears of salary and consequential benefits for the period from 1.3.1986 to 30.6.1986.

2. The Respondents- Railway Administration in their counter, denied the allegations made against them and contended inter-alia that the petitioner had executed an undertaking on 19.3.1957 before the 'Loco Foreman' WKN Jn. and as per that agreement his date of birth was assessed as 2.2.1928 as per the medical certificate issued by the District Medical Officer, BVP. According to them, the petitioner has been made to retire on 28.2.1986 i.e., on his attaining the age of superannuation on the basis of the date of birth assessed as ^{2.2.1928} and ^{2.2.1928} (as per medical certificate) recorded accordingly. It was therefore submitted that the petitioner is not entitled to the reliefs as prayed for.

3. When the matter came up for hearing we have heard Mr. M.K. Paul & Mr. B.R. Kyada, the learned counsel for the petitioner and the respondents respectively. During the pendency of the proceedings of this application Mr. Kyada, the learned counsel for the respondents, produced the file containing the "service sheet", on 15.3.1989, pertaining to the petitioner in terms of the directions issued vide our order dated 12.1.1989. We have perused and considered the materials placed on record.

4. The main grievance of the petitioner is that as per the school certificate, Annexure-I, his date of birth is 8.6.1928 and when he was inducted in the service as Loco Cleaner on 3.8.1950 his correct date of birth i.e. 8.6.1928 was duly recorded in the service sheet and the same was attested and signed by him but it is noticed that somebody has corrected it by scoring out the original entry showing that the date of birth is 2.2.1928, without informing him and behind his back. According to him, even in the official records including transfer memo and deputation form before his retirement his correct date of birth has been shown as 8.6.1928. In support of his version he has produced the documents Annexure -2 (dated 8.4.85)&Annexure-3 (dated 24.2.1984). However the respondents have materially relied on the documents Annexure 'A' dated 19.3.1957 purported to have been signed by the petitioner which reads as under :-

FORM 'A'

I am unable to produce any documentary evidence to prove my age. I agree to abide by the decision to record the date of Birth in terms of Clause 2(c) of Rule 144 R.I., on my Certificate of fitness on first employment. I will not produce any certificate in future.

Sd/- (Manubha Shamatsingh)
Signature of employee

Sd/-
LOF FORMAN
WKR. JN.

Signature of S/d-
Witness. _____
Designation _____
Date 19.3.1957.

5. Now it is well settled that in the matter of date of birth in the case of a Government servant the one which is originally recorded in the service record is very material. Moreover two important position emerged in such matters, viz; (i) there must be finality with regard to the date of birth in the case of employee concerned, (ii) assumption is that a reasonable opportunity should be given to the employee to have a date of birth corrected under the relevant rules. The

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rules regulating the requirements regarding the date of birth and the question of its alteration were covered under Rule 144 (now 145) of the Indian Railway Establishment Code, Western Railway, (1954 Edition) as it stood before 1971, which is reproduced as below:-

" Rule 144 Date of birth : (1) Every person, on entering Railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering Railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the employee's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior subordinate and witnessed by another Railway servant.

(2) (a) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively, shall be treated as the date of birth.

(b) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation e.g., if a person enters service on 1st January, 1928 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1920.

(c) Where the person concerned is unable to state his age, it should be assessed by a Railway Medical Officer and the age so assessed entered in his record of service in the manner prescribed above.

(3) The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall be permitted subsequently. It shall, however, be open to the President in the case of a gazetted Railway servant, and a General Manager in the case of non-gazetted Railway servant to cause the date of birth to be altered -

(i) Where in his opinion it had been falsely stated by the Railway servant to obtain and advantage otherwise inadmissible, provided that such alteration shall not result in the Railway servant being retained in service longer than if the alteration had not been made, or

(ii) Where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or

(iii) Where, a satisfactory explanation (which should ordinarily be submitted within a reasonable time after joining service) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the records amended, or

(iv) Where the request for an alteration of the recorded date of birth supported by a copy of school register and transfer certificate is made near the date of retirement, in which case the railway servant concerned till a decision is taken, may be

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given the benefit of doubt even if his recorded age is beyond 55 years, subject to the conditions that his work is satisfactory and he is physically fit to continue in service and that in the case of workshop or shed staff and staff on train passing, etc. they will be subject to periodical medical examination for physical fitness."

6. It is also now well settled that the authority competent to alter the date of birth is the Railway Board in the case of Gazetted Officer and the General Manager or his delegate C.P.O. in the case of non-gazetted railway servant.

7. On perusal of the entry recorded in the service sheet in column No.9, it is now amply clear that it has been initially recorded as 8.6.28 and not 2.2.1928 as contended by the Respondents. As per the requirement of the rule quoted above the relevant entries including the one pertaining to the date of birth has to be recorded by the employee concerned and the same has to be duly signed by him in testimony thereof, in case, he is a literate. The petitioner seems to have placed his signature against the column No.15. The signature of the petitioner seems to have been verified by the Head Ticket Examiner, Morvi on 29.1.1956, the entry of the date of birth initially recorded as 8.6.1928 (in black ink) seems to have been scored out and somebody seems to have written the date as 2.2.1928. The respondents have totally failed to explain as to who has corrected the same and on what authority or decision it was so done. They have simply relied upon the document dated 19.3.1957 which is only an undertaking/^{or} the employee that he will not produce any certificate in future. Now, it is categorically asserted by the petitioner that he had clearly declared his date of birth as 8.6.1928 on the basis of his School Leaving Certificate and it was duly recorded in the official record including service sheet. The plea of the petitioner is adequately established by all the service record produced by him.

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This factual aspect has remained unrebutted.

8. The law is settled by the Supreme Court in State of Orissa V/s. Dr. (Miss) Binapani Dei (A.I.R. 1967 S.C. 1269) wherein it is observed as under :-

"The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an enquiry if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in a position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of person invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be superadded. If there is a power to decide and determine to the prejudice of a person duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

9. In the present case, the fact (of the entry initially recorded - date) that "8.6.1928" is recorded as date of birth in the entry against Col. No. 9 in the service sheet and the same is scored out, is not in dispute. More-over, it is pertinent to note that the respondents have not preferred to produce the decision rendered by the competent authority regarding the change to be made in the date of birth prior to the

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impugned action. In Binapani Dei's case (supra) it is observed that the change of date of birth in the service book without giving ample opportunity of showing cause, is contrary to the basic establishment of justice and is in breach of rules of natural justice and therefore the action of the respondents - railway administration in retiring the petitioner with effect from 28.2.1986 in pursuant to the Notification dated 17.7.85 (paper book page 16 & 17) and on the basis of such a disputed entry of date of birth and that too without giving a hearing can not be sustained. The petitioners' date of birth appearing in his service sheet was initially recorded as "8.6.1928", as a correct date of birth claimed by him. Now it could not be altered to 2.2.28 without notice to him. That being so the order of retirement must be held to be nullity.

10. It is true the petitioner had admittedly cross his age ~~of~~ superannuation when he filed this application and hence the question of is being reinstated in the service does not arise. All that he can claim is a money decree for the arrears of salary and other benefits admissible to him for the period 1.3.1986 to 30.6.1986 on the basis of his initially recorded correct date of birth i.e. "8.6.1928".

11. The net result of the aforesaid discussion, is that the application succeeds and is allowed. It is held that the action of the Respondents-Railway Administration in making the petitioner retired with effect from 28.2.1986, in pursuance of the notification dated 17.7.85 is hereby quashed. It is further held that the petitioner was entitled to continue until he attained the age of 58 which event would have come on 30.6.1986 and he must be deemed to have superannuated only then. Accordingly, the respondents are directed

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to work out the arrears of salary for the relevant period and pay the same within three months from the date of this judgment. In the special circumstances of the case we direct that the respondents shall pay the costs of this application to the petitioner, which we quantify at Rs. 500/-.

The original file including the "service sheet" of the petitioner be returned to the respondents by the Registry, only after placing a x'erox copy of the service sheet referred to above, on record.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN